



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 E. Third Avenue
Williamson, WV 25661

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

May 28, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 30, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your level of care hours from Level "C" to Level "B".

In arriving at a decision, the State Hearings Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Aged/Disabled Waiver program is based on current policy and regulations. These regulations provide that number of homemaker service hours is determined based on the Level of Care (LOC). The Level of Care is determined by evaluating the Pre-Admission Screening Form (PAS) and assigning points to documented medical conditions that require nursing services. Program services are limited to a maximum number of units/hours which is reviewed and approved by WVM (Aged/Disabled Home and Community Based Waiver Policy and Procedures Manual § 501.3).

The information submitted at your hearing revealed that you do not meet the medical criteria required for Level "C" care.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to reduce your homemaker service hours under the Aged and Disabled Waiver Program to Level "B."

Sincerely,

Stephen M. Baisden
State Hearings Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services

-----, [REDACTED] WV

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

Claimant

v.

Action Number: 09-BOR-2315

**West Virginia Department of
Health and Human Resources**

Respondent

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 28, 2010 for -----. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on March 30, 2010 on a timely appeal filed December 2, 2009.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Waiver (ADW) is administered by the West Virginia Department of Health & Human Resources.

The ADW Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

III. PARTICIPANTS:

-----, Claimant

-----,  Claimant's Witness

Kay Ikerd, RN, WV Bureau of Senior Services, Department's Representative
Teena Testa, RN, West Virginia Medical Institute (WVMI), Department's Witness

Presiding at the Hearing was Stephen M. Baisden, State Hearing Examiner and a member of the Board of Review.

This Hearing was conducted by telephone conference call.

The Hearing Examiner placed all participants under oath at the beginning of the hearing.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department was correct in the decision to reduce Claimant's homemaker hours from a Level "C" to a "B."

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Waiver Policy Manual, chapter 501.3.2.1 and chapter 501.3.2.2.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Waiver Policy Manual Chapter 501.3.2.1 and 501.3.2.2
- D-2 Pre-Admission Screening (PAS) Form dated November 3, 2009
- D-3 Notice of Decision dated November 3, 2009

Claimant's Exhibits:

- C-1 Statement from Claimant's primary care physician dated March 24, 2010

VII. FINDINGS OF FACT:

- 1) Department's representative read into the record the applicable policy for this hearing. (Exhibit D-1.) Aged/Disabled Home and Community Based Waiver Policy Manual Chapter 501.3.2.1 and 501.3.2.2 states:

There will be four levels of care for clients of ADW homemaker services. Points will be determined based on the following sections of the PAS:

- #23- Medical Conditions/Symptoms - 1 point for each (can have total of 12 points)
- #24- Decubitis- 1 point

- #25- 1 point for b., c., or d.
- #26- Functional abilities
 - Level 1- 0 points
 - Level 2- 1 point for each item a. through i.
 - Level 3- 2 points for each item a. through m.; i. (walking) must be equal to or greater than Level 3 before points are given for j. (wheeling)
 - Level 4 - 1 point for a., 1 point for e., 1 point for f., 2 points for g. through m.
- #27- Professional and Technical Care Needs- 1 point for continuous oxygen
- #28- Medication Administration- 1 point for b. or c.
- #34- Dementia- 1 point if Alzheimer's or other dementia
- #35- Prognosis- 1 point if terminal

Total number of points possible is 44.

LEVELS OF CARE SERVICE LIMITS

- Level A- 5 points to 9 points; 2 hours per day or 62 hours per month
- Level B- 10 points to 17 points; 3 hours per day or 93 hours per month
- Level C- 18 points to 25 points; 4 hours per day or 124 hours per month
- Level D- 26 points to 44 points; 5 hours per day or 155 hours per month

- 2) Department's witness testified that she scheduled a Pre-Admission Screening (PAS) for the Aged and Disabled Waiver Services (ADW) program with Claimant, conducted it on October 27, 2009 and completed it on November 3, 2009. (Exhibit D-2.) The PAS item #23 lists twelve medical conditions and/or symptoms, each of which is worth one point on the evaluation. Claimant was given five evaluation points for item #23, for angina (rest), angina (exertion), dyspnea, diabetes and other. Other was identified as hypertension. Claimant received one point for item #25, ability to vacate a building. Item #26 lists 13 areas for the evaluator to assess functional levels in various life skills, and assigns points based on the functional level of each skill. Claimant received one point in the area of eating because she sometimes requires physical assistance to cut up her food and was assessed at Level 2. Claimant received one point in the area of bathing because she requires physical assistance to get into and out of the shower, and to wash her back and extremities. She was assessed at Level 2. Claimant received one point in the area of dressing because she requires physical assistance to help her put on her underwear, pants and socks. She was assessed at Level 2. Claimant received one point in the area of grooming because she requires physical assistance to wash her hair. She was assessed at Level 2. Claimant received one point in the area of transferring because she told the nurse reviewer she could get out of bed and on/off the toilet alone, but she required supports to do this. She was assessed at Level 2. Claimant received one point in the area of walking because the nurse reviewer

observed her standing up and walking in her home without someone to help her, but she required supports such as holding onto furniture in order to do this. She was assessed at Level 2. Claimant received a total of six points for item #26. Claimant received one point for item #27, professional and technical care needs, for the use of continuous oxygen. Claimant received one point for item #28, ability to administer her medications. Claimant was awarded a total of 14 points on the PAS and was approved for Level B care. WVMI communicated its decision to Claimant in a Notice of Decision dated November 3. (Exhibit D-3.)

- 3) On March 24, 2010, Claimant's physician, [REDACTED] M.D., submitted to Claimant's case management agency, [REDACTED] of [REDACTED] WV, a statement indicating he diagnosed Claimant with dysphagia, chronic pain and severe arthritis. (Exhibit C-1.) A representative of [REDACTED] forwarded this statement to the Board of Review on March 26, 2010. Because this information was not available to the nurse reviewer at the time the PAS was being completed, and because this statement did not indicate that Claimant had these medical conditions at the time of the PAS, this statement offers no substantial information to this decision.
- 4) Claimant and her case manager/representative testified that Claimant should have received three more points on her PAS. They stated Claimant should have received one more point on item #23, Medical Conditions/Symptoms, for congestive heart failure. They further stated Claimant should have received two more points at item #26, functional abilities, for bladder continence and wheeling.

Congestive Heart Failure – Claimant's representative testified that Claimant has a diagnosis of congestive heart failure. Department's representative testified that this diagnosis falls under "l. other" for this item, and that Claimant has another diagnosis which is listed under "other," hypertension. Department's representative testified that if Claimant had one or any number of diagnoses listed as "other," this would still result in one PAS point.

Bladder Continence – Claimant testified she has occasional bladder accidents. On the October 27 PAS, the reviewer wrote in the "Overall Comments" or narrative section, "WHEN IT COMES TO HER BLADDER [Claimant] STATES SHE DOES NOT HAVE ACCIDENTS ON HERSELF. [Claimant] NOTES SHE DOES USE THE POTTY CHAIR. [Claimant] DOES NOT USE ANY PADS OR DIAPERS. DENIES HAVING ANY DRIBBLING OF HER URINE." Department's witness testified that Claimant was asked three or four times about her bladder, and she told the reviewer she did not have bladder accidents. Department's witness testified that Claimant was rated at Level 1, continent of bladder, no points awarded. Department's witness added that after the PAS was complete, she reviewed the PAS with Claimant and her homemaker.

Both of them agreed with the information she recorded in this area. Claimant testified that this area is embarrassing to her and she did not want to admit to the nurse reviewer that she had problems in this area.

Wheeling – Claimant and her representative testified that Claimant uses a wheelchair in her home. Department’s witness testified that Claimant was sitting at the kitchen table while she was conducting the PAS. On the October 27 PAS, the reviewer wrote, “NO W/C USED IN THE HOME.” Also on the October 27 PAS, Claimant was rated in the functional area of walking at a level 2, “Supervised/Assistive Device.” An individual must be assessed at level 3 (“One Person Assist”) for walking in order to receive a point for wheeling. Claimant testified that she told the nurse reviewer she did not have a wheelchair because she did not have one in her daughter’s home, where she was staying at the time. She stated she was not able to get it into her daughter’s home because it was too large and heavy to get it into the house. Claimant identified this device as a power chair.

Claimant and her representative offered no substantial medical evidence to support their contention that Claimant should have received more points on his PAS than she was originally awarded.

- 5) Claimant testified that her level of care should remain at “C” because she needed more assistance than a “B” level of care. She stated that her condition is deteriorating and she needs more help now than she did when the PAS was completed.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an individual’s Level of Care for the Aged/Disabled Waiver Program is determined by the number of points obtained on the PAS assessment tool. The Claimant was awarded 14 points as the result of a PAS completed by WVMI in November 2009.
- 2) No additional PAS points for congestive heart failure will be awarded because this condition is listed on the PAS at item #23, “l. other.” One point has already been awarded for “other.”
- 3) No additional PAS points for bladder continence will be awarded because Department’s witness correctly assessed Claimant at Level 1, continent, based on the nurse reviewer’s interview with Claimant during the PAS.
- 4) No additional PAS points for wheeling will be awarded because Department’s witness correctly assessed Claimant at Level 1, no wheelchair use, based on the

nurse reviewer's interview with Claimant during the PAS, and based on the fact that Department's Exhibit D-2 indicates Claimant was assessed at level 2 for walking.

- 5) Since no additional points will be added to Claimant's PAS evaluation score, it will remain at 14 points. She meets the medical criteria required to receive a Level B of care.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to reduce Claimant's level of care under the Aged and Disabled Waiver Program from Level "C" to Level "B".

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th day of May 2010.

Stephen M. Baisden
State Hearing Officer